

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2007-0059, Michael French and Zoë French v. Daniel Cilley and Kate Cilley, the court on December 21, 2007, issued the following order:

The appellants, Daniel and Kate Cilley, appeal an order of the Concord District Court granting the RSA chapter 540 eviction action of the respondents, Michael and Zoë French. We affirm.

The appellants argue that the trial court erred in finding that they had committed multiple material breaches of their ten-year commercial lease of two fields and a barn for use in an organic dairy farm. The appellants also argue that the trial court erred in granting their eviction because the lease could not be terminated at any time and for any reason.

“Whether conduct is a material breach is a question for the trier of fact to determine from the facts and circumstances of the case. On appeal, we will not reverse the findings of the trial court unless they lack support in the record.” Barrows v. Boles, 141 N.H. 382, 388 (1996) (quotation, citation and brackets omitted).

We will assume, without deciding, that the appellants correctly assert that materiality is determined under the objective standard laid out in N.A.P.P. Realty Trust v. CC Enterprises, 147 N.H. 137 (2001), because the appellees do not dispute it. Thus, we “consider the parties’ intent by examining the contract as a whole, the circumstances surrounding execution and the object intended by the agreement, keeping in mind our goal of giving effect to the intention of the parties.” *Id.* at 141.

One provision of the lease states that “manure will be removed daily and hauled away from the farm.” The appellants concede that they failed on more than one occasion to remove manure within twenty-four hours. Thus, as both parties agree that these occurrences breached the lease, we need only consider whether there is evidence in the record to support the trial court’s finding that those breaches were material under an objective standard.

Michael French testified about the importance of the manure provision. He testified that French Pond had suffered chronic algae problems, likely caused by nearby farming activities and that it was very important to him that the farm activities on his property not endanger French Pond. He testified that he was

particularly insistent that the manure be hauled away daily out of concern that the manure would run off and contaminate the pond.

Michael French also testified about the significance of the breaches. The appellees introduced two pictures into evidence of large piles of manure. Michael French testified that at least one of these piles was an accumulation of at least five or six days of manure. He testified that large piles of manure would be left on the property on a sporadic basis. Though Daniel Cilley testified that they failed to haul away the manure only on a few occasions because of equipment problems, the trial court could have found Michael French's testimony more persuasive. We must assume that the trial court applied the correct standard in weighing the evidence, because there is no reason to believe otherwise. See Grabowski v. Grabowski, 120 N.H. 745, 748 (1980).

Michael French also testified that the parties had negotiated for nearly two years prior to signing the lease and that the appellees would not sign the lease unless the provisions were strictly followed. He testified that he and Daniel Cilley had lengthy discussions about the lease provisions and that he explained the importance of each lease provision. In particular, Michael French stated that the manure provision had initially been more strict, but that he and Daniel Cilley had agreed to loosen the arrangement as long as the manure was removed before nightfall. Thus, given the intent of the parties and the circumstances surrounding the execution of the lease, the trial court could have found that the appellants materially breached the lease.

Because the trial court could properly have found that the breach of the manure provision was material, we need not address whether there were other material breaches. Further, because we find no error in the trial court's findings and rulings, we need not address the second issue. Even assuming that the issue has been preserved for our review and that the termination clause is ambiguous, the defendants admit that "the [l]ease reflects the parties' intent that termination requires a material breach." As there was a material breach, the eviction did not violate the termination clause.

Affirmed.

DALIANIS, DUGGAN and GALWAY, JJ., concurred.

**Eileen Fox,
Clerk**